

United States District Court  
Central District of California

KEVIN T. KNOX; NOE BAROCIO;  
SALVADOR BAROCIO; CINDY  
CONYBEAR, each individually and on  
behalf of all others similarly situated,

Plaintiffs,

v.

YINGLI GREEN ENERGY HOLDING  
COMPANY LIMITED; LIANSHENG  
MIAO; YIYU WANG; and ZONGWEI  
“BRIAN” LI,

Defendants.

Case № 2:15-cv-04003-ODW(MRWx)  
[c/w: 2:15-cv-04600-ODW (MRWx)]

**ORDER GRANTING  
DEFENDANT’S MOTION TO  
DISMISS [108] AND DENYING AS  
MOOT DEFENDANT’S MOTION  
TO STRIKE [110]**

**I. INTRODUCTION**

This is a putative class action for securities fraud under sections 10(b) and 20(a) of the Securities Exchange Act of 1934. Plaintiffs Noe Barocio, Salvador Barocio, and Cindy Conybear allege that Defendant Yingli Green Energy Holding Company Limited (“Yingli”), a company that sells solar energy products, defrauded its investors by making false or misleading public statements about (1) the company’s involvement in a government subsidy program, and (2) the collectability of an outstanding debt. Yingli now moves to dismiss Plaintiffs’ Consolidated Third Amended Complaint and moves to strike the declaration of Harris L. Devor, CPA. (ECF Nos. 108, 110.) For

1 the reasons discussed below, the Court **GRANTS** the Motion to Dismiss without  
2 leave to amend and **DENIES AS MOOT** the Motion to Strike.

## 3 **II. BACKGROUND**

4 The Court has recited and analyzed the facts underlying this lawsuit at length in  
5 prior orders, and thus the Court now recites only the background facts and any new  
6 facts relevant to the disposition of this Motion. Yingli is a publicly traded company  
7 that manufactures and sells solar energy products. (Consol. Third Am. Compl.  
8 (“TAC”) ¶¶ 2, 27, ECF No. 106.) Prior to 2010, Yingli sold its products mainly to  
9 European companies. (*Id.* ¶¶ 4, 36.) Beginning in 2011, however, Yingli’s sales  
10 gradually shifted from Europe to China. (*Id.* ¶¶ 5–7, 39–43.) This shift was due in  
11 part to a solar energy subsidy program offered by the Chinese government called  
12 “Golden Sun.” (*Id.* ¶¶ 8, 47.)

### 13 **A. Golden Sun Program**

14 Under the Golden Sun Program, the Chinese government subsidized up to 70%  
15 of the cost of approved solar power projects in China. (*Id.* ¶ 48.) Yingli benefitted  
16 from the program in two ways. First, the developers for one-quarter of all Golden Sun  
17 projects purchased photovoltaic panels from Yingli. (*Id.* ¶¶ 9, 53, 54.) Second, Yingli  
18 received subsidies for its own solar power projects. (*Id.* ¶ 54.)

19 Between December 2, 2010, and March 4, 2013, Yingli issued statements  
20 touting its involvement in—and attributing its success in the Chinese market to—the  
21 Golden Sun Program. (*Id.* ¶¶ 56–71.) According to Plaintiffs, these cheery statements  
22 were misleading because Yingli did not disclose the risk that widespread fraud in the  
23 program could lead to its termination. (*Id.* ¶¶ 72, 81–82.) This fraud included subsidy  
24 recipients (1) overstating project costs in subsidy applications, (2) deliberately  
25 delaying project construction to take advantage of falling project costs, and (3) using  
26 materials of lower quality than what they originally agreed to use. (*See id.* ¶¶ 86–93.)  
27 For example, in late 2011 or early 2012, Yingli applied for a Golden Sun subsidy for a  
28 “large and relatively expensive project” when the cost of producing solar energy was

1 RMB 13 per watt. (*Id.*) After receiving the subsidy, Yingli “deliberately delay[ed]  
2 construction” on the project until this cost had fallen to RMB 7–8 per watt. (*Id.*) This  
3 resulted in Yingli “earn[ing] a fraudulent profit of RMB 5–6 per watt.” (*Id.*)  
4 According to a former employee of a Yingli subsidiary (FE3),<sup>1</sup> delaying construction  
5 in this manner was a “deliberate policy” used by Yingli and “most companies”  
6 receiving Golden Sun subsidies. (*Id.* ¶¶ 91–93.) FE3 characterizes this policy as an  
7 “open secret” in the Chinese solar industry. (*Id.* ¶ 93.) Between March 18 and March  
8 22, 2013, a series of news articles and industry experts predicted that the Chinese  
9 government would discontinue the Golden Sun Program. (*Id.* ¶¶ 73, 75, 76.) These  
10 articles and predictions allegedly caused Yingli’s stock price to fall 6.9% on March 18  
11 and 22.2% on March 25. (*Id.* ¶¶ 73, 77.)

## 12 **B. Yingli’s Doubtful Accounts**

13 Plaintiffs also allege that Yingli committed accounting fraud. Specifically,  
14 Plaintiffs allege that Yingli should have disclosed in its 2013 20-F Annual Report  
15 problems collecting a RMB 75.3 million debt owed by Shanghai Chaori Solar Energy  
16 Science & Technology Co. Ltd. (“Chaori”). (*Id.* ¶¶ 16, 96.) According to Plaintiffs,  
17 Yingli waited until its Q4 2014 Report and 2014 20-F Annual report to disclose the  
18 collection issue. Specifically, in its Q4 2014 Report, Yingli disclosed that it had  
19 recorded a bad debt provision of RMB 90.5 million. (*Id.* ¶ 145; Def.’s Req. for  
20 Judicial Notice (“RJN”), Ex. D, ECF No. 109.) Although this report did not disclose  
21 the debtors’ identities, Plaintiffs believe that this bad debt included the Chaori  
22 receivable because Chaori received court approval for its bankruptcy plan during that  
23 financial quarter. (TAC ¶ 146.) On the day Yingli released this report (March 25,  
24 2015), Yingli’s stock price dropped 15%. (*Id.* ¶ 147.) On May 15, 2015, Yingli filed  
25 its 2014 20-F Annual Report, wherein it disclosed that it was writing off RMB 205.9  
26 million in overdue accounts receivable. (*Id.* ¶¶ 148, 149; RJN, Ex. E.) Plaintiffs

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27 <sup>1</sup> FE3’s responsibilities at Yingli were “to grow Yingli’s market share in China, chiefly through  
28 the Golden Sun program, to develop and systematize Yingli’s products, to collect industry resources  
and to manage construction projects.” (TAC ¶ 35.)

1 allege that “[a]pproximately RMB 60 million of this write off arose from the Chaori  
2 Receivable.” (TAC ¶ 149.) The next trading day, Yingli’s stock price dropped  
3 12.4%. (*Id.* ¶ 150.) The following day, Yingli’s stock price fell a further 37%. (*Id.*)

### 4 **C. Procedural History**

5 This Court has twice dismissed Plaintiffs’ complaint for failure to comply with  
6 the relevant pleading requirements. *See Knox v. Yingli Green Energy Holding Co.*  
7 *Ltd.*, No. 215CV04003ODWMRWX, 2016 WL 6609210 (C.D. Cal. May 10, 2016);  
8 *Knox v. Yingli Green Energy Holding Co. Ltd.*, No. 215CV04003ODWMRWX, 2017  
9 WL 1013293, at \*1 (C.D. Cal. Mar. 15, 2017). After the most recent dismissal,  
10 Plaintiffs filed their Consolidated Third Amended Complaint, which Yingli now  
11 moves to dismiss on a variety of grounds. (ECF Nos. 106, 108.) Yingli has also  
12 moved to strike an expert declaration that Plaintiffs attached to the complaint. (ECF  
13 No. 110.) Those Motions are now before the Court for consideration.

### 14 **III. LEGAL STANDARD**

15 The court may dismiss a complaint for failure to plead sufficient facts to  
16 support a claim for relief. Fed. R. Civ. P. 12(b)(6); *Balistreri v. Pacifica Police Dep’t*,  
17 901 F.2d 696, 699 (9th Cir. 1990). “In a typical § 10(b) private action a plaintiff must  
18 prove (1) a material misrepresentation or omission by the defendant; (2) scienter; (3) a  
19 connection between the misrepresentation or omission and the purchase or sale of a  
20 security; (4) reliance upon the misrepresentation or omission; (5) economic loss; and  
21 (6) loss causation.” *Stoneridge Inv. Partners, LLC v. Sci.-Atlanta*, 552 U.S. 148, 157  
22 (2008); *see also* 17 C.F.R. § 240.10b-5. The plaintiff must plead these elements in  
23 accordance with Federal Rule of Civil Procedure 9(b) and the Private Securities  
24 Litigation Reform Act of 1995 (“PSLRA”), *In re VeriFone Holdings, Inc. Sec. Litig.*,  
25 704 F.3d 694, 701 (9th Cir. 2012), although the Rule 9(b) analysis is “effectively  
26 subsumed” under the stricter PSLRA analysis for at least the first two elements, *Miss.*  
27 *Pub. Emps. Ret. Sys. v. Boston Sci. Corp.*, 523 F.3d 75, 85 n.5 (1st Cir. 2008).

28 Generally, the court should liberally grant the plaintiff leave to amend a

1 dismissed complaint. *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000) (en banc).  
2 However, a court may deny leave to amend when it “determines that the allegation of  
3 other facts consistent with the challenged pleading could not possibly cure the  
4 deficiency,” *Schreiber Distrib. Co. v. Serv-Well Furniture Co.*, 806 F.2d 1393, 1401  
5 (9th Cir. 1986), or where the plaintiff has previously failed to cure pleading  
6 deficiencies identified by the court, *Moore v. Kayport Package Exp., Inc.*, 885 F.2d  
7 531, 538 (9th Cir. 1989).

#### 8 IV. DISCUSSION

##### 9 A. Golden Sun Program—Scienter

10 Yingli argues that Plaintiffs have still not alleged facts giving rise to a “strong  
11 inference” that its executives intended to defraud its investors by touting the Golden  
12 Sun Program and not disclosing the risk that the government might terminate the  
13 program. The Court agrees.<sup>2</sup>

14 “The complaint must . . . ‘state with particularity facts giving rise to a strong  
15 inference that the defendant acted with the required state of mind’—that is, that he  
16 acted with intentionality or deliberate recklessness or, where the challenged act is a  
17 forward looking statement, with ‘actual knowledge . . . that the statement was false or  
18 misleading.’” *Ronconi v. Larkin*, 253 F.3d 423, 429 (9th Cir. 2001) (quoting 15  
19 U.S.C. §§ 78u-4(b)(2)(A), 78u-5(c)(1)(B)(i)) (footnotes and some citations omitted).  
20 To determine whether the plaintiff has shown a “strong inference” of scienter, the  
21 court “must engage in a comparative evaluation; it must consider, not only inferences  
22 urged by the plaintiff . . . but also competing inferences rationally drawn from the  
23 facts alleged.” *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 314 (2007).  
24 “An inference of fraudulent intent may be plausible, yet less cogent than other,  
25 nonculpable explanations for the defendant’s conduct. To qualify as ‘strong’ . . . an  
26 inference of scienter must be more than merely plausible or reasonable—it must be

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28 <sup>2</sup> In light of this, the Court need not address Yingli’s contention that the Golden Sun theory is  
barred by the statute of limitations.

1 cogent and at least as compelling as any opposing inference of nonfraudulent intent.”  
2 *Id.* This analysis requires the court to “assess all the allegations holistically” rather  
3 than “scrutiniz[ing] each allegation in isolation.” *Id.* at 326.

4 Plaintiffs rely, as they previously did, on the “absurd to suggest” exception to  
5 the core operations theory to establish scienter. The core operations theory posits that  
6 “facts critical to a business’s core operations or an important transaction generally are  
7 so apparent that their knowledge may be attributed to the company and its key  
8 officers.” *S. Ferry LP, No. 2 v. Killinger*, 542 F.3d 776, 783 (9th Cir. 2008) (internal  
9 quotation marks omitted); *see also In re Read-Rite Corp.*, 335 F.3d 843, 848 (9th Cir.  
10 2003). In *Read-Rite*, and again in *Killinger*, the Ninth Circuit held that a securities  
11 fraud plaintiff cannot “rely[] exclusively on the core operations inference to plead  
12 scienter under the PSLRA.” *Killinger*, 542 F.3d at 784. The only exception is the  
13 “rare” instance where “the nature of the relevant fact is of such prominence that it  
14 would be ‘absurd’ to suggest that management was without knowledge of the matter.”  
15 *Id.* at 786.

16 In ruling on Yingli’s prior motion to dismiss, the Court held that Plaintiffs had  
17 not met this “demanding standard.” *Knox*, 2017 WL 1013293, at \*10. The key flaw  
18 in Plaintiffs’ allegations was that they contained only “vague quantifiers” and  
19 “majestic generalities”—such as “widespread,” “happened ‘generally,’” and “was the  
20 exception, not the rule”—to show how pervasive the fraud in the program was. *Id.*  
21 Without “concrete numbers,” the Court held, no meaningful inference could be drawn  
22 “about what Yingli’s executives knew”—and thus failed to disclose—“regarding [the  
23 Golden Sun] fraud.” *Id.*

24 The current iteration of the complaint fares no better. The few new allegations  
25 pleaded concerning Golden Sun still use the same vague quantifiers and generalities  
26 that the Court previously held to be insufficient: Plaintiffs allege that Yingli delayed  
27 construction on a “large and relatively expensive project”; that it was Yingli’s general  
28 “policy” to delay construction after receiving subsidies; that “other companies

1 throughout the solar industry” had a similar policy; and that the existence of such  
2 policies was an “open secret” in the industry during this time. Indeed, Plaintiffs’  
3 resort to oxymoronic idioms such as “open secret” only highlights how little  
4 meaningful detail their complaint contains. Without knowing facts such as how many  
5 companies had this purported policy and how many projects this policy affected, the  
6 Court cannot conclude that the fraud was *so* pervasive throughout the *entire* solar  
7 industry that Yingli’s upper management could not possibly have been ignorant of it  
8 and its potential to shutter the Golden Sun Program.<sup>3</sup> The Court therefore dismisses  
9 this theory. Moreover, as Plaintiffs’ new allegations are of the same type that the  
10 Court previously held to be insufficient, the Court denies leave to amend. *See Loos v.*  
11 *Immersion Corp.*, 762 F.3d 880, 890 (9th Cir. 2014) (affirming denial of leave to  
12 amend in a securities fraud action where “[t]he district court gave Plaintiff a detailed  
13 explanation of why his original theory . . . was deficient” but the plaintiff “nonetheless  
14 persisted in attempting to establish [liability]” through the same types of allegations).

15 **B. Accounting Fraud—Loss Causation**

16 Yingli argues that Plaintiffs have not established loss causation because the  
17 corrective disclosures that they point to—the Q4 2014 Report and the 2014 20-F  
18 Annual Report—neither identify Chaori nor show that Yingli’s problems collecting  
19 the Chaori debt should have been disclosed sooner. The Court agrees.<sup>4</sup>

20 “Loss causation is the causal connection between a defendant’s material  
21 misrepresentation and a plaintiff’s loss.” *In re Oracle Corp. Sec. Litig.*, 627 F.3d 376,  
22 392 (9th Cir. 2010). “Loss causation is established if the market learns of a

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24 <sup>3</sup> Further, as Yingli points out, it is unclear how its purported policy of delaying project  
25 construction even constitutes fraud. Plaintiffs suggest that this policy violated the terms of the  
26 subsidies, which imposed tight deadlines on project completion. But tight deadlines merely  
27 *discourage* construction delays; it does not *prohibit* them. Because Plaintiffs do not show that the  
28 practice is fraudulent, it is unclear how the practice materially contributed to the Chinese  
government’s decision to shutter the Golden Sun Program. This is yet another reason why Plaintiffs’  
new allegations add nothing to the scienter inquiry.

<sup>4</sup> In light of this, the Court need not address Yingli’s contention that Plaintiffs have not  
adequately pleaded falsity and scienter.

1 defendant's fraudulent act or practice, the market reacts to the fraudulent act or  
2 practice, and a plaintiff suffers a loss as a result of the market's reaction." *Id.*; *see*  
3 *also Metzler Inv. GMBH v. Corinthian Colleges, Inc.*, 540 F.3d 1049, 1063 (9th Cir.  
4 2008) ("[T]he complaint must allege that the practices that the plaintiff contends are  
5 fraudulent were revealed to the market and caused the resulting losses."). However,  
6 the misrepresentation need only be "one substantial cause of the investment's decline  
7 in value"; it need not be the *sole* reason. *In re Daou Sys., Inc.*, 411 F.3d 1006, 1025  
8 (9th Cir. 2005) (internal quotation marks omitted). Plaintiffs must plead loss  
9 causation with particularity under Rule 9(b). *Or. Pub. Emps. Ret. Fund v. Apollo Grp.*  
10 *Inc.*, 774 F.3d 598, 605 (9th Cir. 2014).

11 Here, Yingli correctly notes that neither the Q4 2014 Report nor the 2014 20-F  
12 Annual Report identify the particular debtors whose accounts Yingli wrote off.<sup>5</sup>  
13 Instead, Plaintiffs appear to infer that these reports accounted for RMB 60 million of  
14 the Chaori receivable because the Chinese bankruptcy court approved Chaori's  
15 bankruptcy plan in October 2014. This is insufficient. As the Court previously noted,  
16 deciding when to recognize an outstanding account as doubtful "is an imprecise  
17 science, because the underlying accounting concept—i.e., reasonable assurance of  
18 collectability—"is a matter of judgment and estimate.'" *Knox*, 2017 WL 1013293, at  
19 \*12 (quoting *In re Galileo Corp. S'holders Litig.*, 127 F. Supp. 2d 251, 265 (D. Mass.  
20 2001)); *cf. DiLeo v. Ernst & Young*, 901 F.2d 624, 627 (7th Cir. 1990) ("For any bad  
21 loan the time comes when the debtor's failure is so plain that the loan is written down  
22 or written off. No matter when a bank does this, someone may say that it should have  
23 acted sooner."); *In re GlenFed, Inc. Sec. Litig.*, 42 F.3d 1541, 1549 (9th Cir. 1994)  
24 ("[T]he setting of loan loss reserves [is] based on flexible accounting concepts, which,  
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26 <sup>5</sup> Because of this, Plaintiffs' bare allegation that these two reports did in fact disclose the Chaori  
27 receivable is insufficient. *See Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1105 (9th Cir. 2003)  
28 ("[I]f particular averments of fraud are insufficiently pled under Rule 9(b), a district court should  
'disregard' those averments, or 'strip' them from the claim. The court should then examine the  
allegations that remain to determine whether they state a claim.").

1 when applied, do not always (or perhaps ever) yield a single correct figure.”). Thus,  
2 alleging facts tending to show the outer limit of when Yingli *should have* recognized  
3 the Chaori debt does not establish when Yingli *actually did* so.<sup>6</sup> And without  
4 particularized allegations showing that Yingli’s Q4 2014 Report and 2014 20-F  
5 Annual Report actually recognized the Chaori account as doubtful (or wrote it off),  
6 Plaintiffs cannot show that Yingli’s accounting for that debt had any causal  
7 connection to the drops in stock price that followed the release of the reports.

8 Moreover, and perhaps even more critically, nothing in either report revealed  
9 that Yingli should have disclosed the Chaori debt sooner. Loss causation requires that  
10 the market learn of, and react to, the company practice that the plaintiff alleges is  
11 fraudulent (although the market need not have learned that the practice was in fact  
12 fraudulent). *Metzler Inv. GMBH*, 540 F.3d at 1063–65; *Loos*, 762 F.3d at 888  
13 (holding that financial disclosures were insufficient to establish loss causation because  
14 they “d[id] not reveal any information from which revenue accounting fraud might  
15 reasonably be inferred”); *Oracle Corp. Sec. Litig.*, 627 F.3d at 393 (rejecting the  
16 argument that the plaintiff can “prove loss causation by showing that the market  
17 reacted to the purported ‘impact’ of the alleged [accounting] fraud . . . rather than to  
18 the fraudulent acts themselves”). Here, the two reports did not identify Chaori and did  
19 not include any facts from which one can infer that the Chaori debt should have been  
20 disclosed earlier (if they even accounted for the debt at all). As Yingli notes, simply  
21 recognizing that an account has become uncollectible does not imply that it was  
22 uncollectible at some earlier point. Because the market could not have reacted to a  
23 fact that it did not know, Plaintiffs cannot establish loss causation.

24 For these reasons, the Court dismisses Plaintiffs’ accounting fraud theory. In  
25 addition, the Court declines to grant leave to amend. This is the fourth iteration of the

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27 <sup>6</sup> Indeed, Yingli’s Q1 2014 report recognized a non-cash bad debt provision of RMB 76.1  
28 million—almost exactly the amount of the Chaori debt. (RJN, Ex. C, ECF No. 109-3.) If, as  
Plaintiffs contend, Yingli should have recognized the Chaori debt in 2013, it is unclear why they  
assume that no part of the RMB 76.1 million debt write-off in Q1 2014 related to that debt.

1 complaint and Plaintiffs' fourth attempt to plead a viable accounting fraud theory.  
2 Even though Yingli did not previously attack this theory based on a failure to establish  
3 loss causation, the Court cannot see how Plaintiffs could cure the deficiency. Yingli's  
4 2015 disclosures do not specifically identify Chaori as the debtor whose receivable  
5 was listed as doubtful and/or written off, and did not disclose Yingli's accounting  
6 practices with respect to the Chaori debt. An amended complaint cannot change this.

7  
8 **V. CONCLUSION**

9 For the foregoing reasons, the Court **GRANTS** Yingli's Motion to Dismiss and  
10 **DENIES AS MOOT** Yingli's Motion to Strike. (ECF Nos. 108, 110.) The Court  
11 further **ORDERS** Plaintiffs to **SHOW CAUSE**, in writing only, no later than **August**  
12 **18, 2017**, why the Court should not dismiss Defendants Liansheng Miao, Yiyu Wang,  
13 and Zongwei "Brian" Li without prejudice based on Plaintiffs' failure to serve them  
14 with the complaint within the Rule 4(m) period.

15 **IT IS SO ORDERED.**

16  
17 August 15, 2017

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21 **OTIS D. WRIGHT, II**  
22 **UNITED STATES DISTRICT JUDGE**  
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